

Exemption No. 10363

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC 20591

In the matter of the petition of

**CAVANAUGH FLIGHT
MUSEUM**

for an exemption from §§ 91.315,
91.319, 119.5(g), and 119.21(a)
of Title 14, Code of
Federal Regulations

Regulatory Docket No. FAA-2011-0962

DENIAL OF EXEMPTION

By letter dated August 17, 2011, Mr. Doug Jeanes, Executive Director, Cavanaugh Flight Museum (CFM), 4572 Claire Chennault, Addison, Texas 75001, petitioned the Federal Aviation Administration (FAA) on behalf of CFM for an exemption from §§ 91.315, 91.319, 119.5(g), and 119.21(a) of Title 14, Code of Federal Regulations (14 CFR). The proposed exemption, if granted, would allow the petitioner, CFM, to conduct living history flight experience (LHFE) operations in its DeHavilland DHC-4A (C-7 Caribou), N149HF.

The petitioner requires relief from the following regulations:

Section 91.319(a): Aircraft having experimental certificates: Operating limitations:

(a) No person may operate an aircraft that has an experimental certificate—

(1) For other than the purpose for which the certificate was issued; or

(2) Carrying persons or property for compensation or hire.

Section 119.5(g): Certifications, authorizations and prohibitions: No person may operate as a direct air carrier or as a commercial operator without, or in violation of, an

appropriate certificate and appropriate operations specifications. No person may operate as a direct air carrier or as a commercial operator in violation of any deviation or exemption authority, if issued to that person or that person's representative.

Section 119.21(a): Commercial operators engaged in intrastate common carriage and direct air carriers: Each person who conducts airplane operations as a commercial operator engaged in intrastate common carriage of persons or property for compensation or hire in air commerce, or as a direct air carrier, shall comply with the certification and operations specifications requirements in subpart C of this part....

The petitioner supports its request with the following information:

The petitioner states it is a qualified nonprofit 501(c)(3) educational organization devoted to promoting aviation studies and to preserving America's aviation heritage. The petitioner fulfills its mission by restoring, operating, maintaining, and displaying historically significant, vintage military aircraft, and by collecting materials related to the history of aviation.

The petitioner states that an exemption is in the best interest of the public because an exemption would allow the petitioner to use its historic military aircraft to provide the public with an educational experience. Specifically, the petitioner plans to provide an opportunity for members of a veterans group, the C-7A Caribou Association, to relive certain aspects of their Vietnam experiences. Specifically, the petitioner wishes to provide flight experiences to members of this association and their families on local educational flights. The petitioner contends that a grant of exemption will allow it to use its historic military aircraft to provide an educational experience to the public.

The petitioner also states that a grant of exemption is in the public interest as it will have no negative impact on air carriers that operate aircraft with standard airworthiness certificates. The flights the petitioner intends to provide on its DHC-4A would depart and return to the same airport, with a landing and takeoff at a separate location. Further, the petitioner states that it is not holding itself out for the carriage or transportation of persons or property and thus will not present any type of competition to air carriers.

The petitioner also argues that operations conducted in accordance with the sought exemption would be conducted at an equivalent level of safety. In support of this argument, the petitioner states that all maintenance personnel are FAA-certificated airframe and powerplant mechanics, and these staff members perform all maintenance required by the Federal Aviation Regulations. According to the petitioner, all aircraft are maintained in accordance with 14 CFR part 91 and inspections meet the requirements of § 91.409. The petitioner states that all inspections are based on appropriate military technical orders and aircraft manuals. Additionally, the petitioner

notes that the aircraft is maintained in accordance with an FAA-approved Airworthiness Inspection Program (AAIP).

In further support of its safety argument, the petitioner states that all pilots who operate the DHC-4A will hold a minimum of a commercial pilot certificate and second class medical certificate and hold a DHC-4 type rating. The petitioner notes that it has extensive training programs and that specific qualifications and FAA check-out procedures are enforced. Further, the petitioner's executive director would approve all pilots for the operation of the DHC-4A.

The FAA has determined that good cause exists for waiving the requirement for Federal Register publication because this action does not set a precedent, and any delay in acting on this petition would be detrimental to CFM.

The FAA's analysis is as follows:

Although the petitioner requested relief from § 91.315, N149HF holds an experimental airworthiness certificate. Section 91.315 applies only to aircraft certificated in the limited category. Consequently, an exemption from § 91.315 would not be necessary to conduct the operations described in this request for exemption.

Currently, there is a moratorium on new LHFE exemptions, including the addition of new aircraft to current exemptions. Notice of this policy was published in the Federal Register (76 FR 16239) on March 23, 2011. While the original scope of the policy limited exemptions to operations conducted in World War II or earlier vintage airplanes, the policy has expanded to include newer and more complex aircraft. The agency attempted to mitigate additional safety concerns presented by this expansion of the LHFE policy by including numerous conditions and limitations in LHFE exemptions. However, under certain circumstances, operators have misinterpreted these conditions and limitations as permitting operations that the FAA did not intend. The moratorium was put into place so that the agency can assess public safety and public policy concerns that have arisen over time as the LHFE policy expanded beyond its original scope.

Notwithstanding the moratorium, the FAA has policy and safety concerns related to this petition for exemption, which will be discussed below. Regarding the airplane's airworthiness certification, the petitioner states that its DHC-4A was previously licensed in the standard category; however, the aircraft was decertified. The aircraft is now licensed in the experimental category, and the petition provided no explanation of why CFM is unable to maintain the DHC-4A in the standard category. The LHFE was created to permit the public to experience flight in historic aircraft for which there is no comparable certificated aircraft, not as a means to permit the carriage of passengers for hire in aircraft that may no longer be maintained to their original, standard certification level.

The FAA has approved an airworthiness inspection program for this aircraft, but CFM does not hold an operating certificate; therefore, surveillance and validation are limited. However, on August 15, 2011, the FAA conducted an inspection of the DHC-4A. Although the aircraft was manufactured in 1962, no military records were available. The first aircraft logbook entry was dated September 22, 1995. The original Department of Transport, Canada Conformity Certificate-Military Aircraft, certifies that this aircraft met FAA Type Certificate 1A19 on Dec 27, 1962, but had 16 deviations. Aircraft logbooks do not contain any information on satisfying these deviations. Additionally, while the approved inspection program contains a replacement or overhaul schedule, the FAA cannot verify that these are in compliance with the manufacturer's requirements since the petitioner does not have these manuals. Without further information, the FAA does not have sufficient data to determine whether an appropriate level of safety can be provided for the paying passengers the petitioner wishes to carry on its DHC-4A.

Additionally, the petitioner states that its pilots are approved by its executive director, Mr. Doug Jeanes, and that "specific qualifications and FAA check-out procedures are enforced...." Mr. Jeanes may provide valuable program oversight for CFM operations; however, he does not hold a designated pilot examiner authorization or a flight instructor certificate. Consequently, Mr. Jeanes' technical expertise to evaluate his pilots' qualifications cannot be ascertained from this petition.

Finally, the petitioner's proposed operations constitute air transportation. The petitioner states that the operations would include a landing at an auxiliary field. The LHFE exemptions have always been limited to non-stop flights. Landings at airports other than the original point of departure would constitute air transportation and are, therefore, beyond the scope of LHFE operations.

The FAA's Decision:

In consideration of the foregoing, I find that a grant of exemption would not be in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 40113 and 44701, delegated to me by the Administrator, the petition of Cavanaugh Flight Museum for an exemption from 14 CFR §§ 91.315, 91.319, 119.5(g), and 119.21(a) is hereby denied.

Issued in Washington, D.C., on September 23, 2011.

/s/

John W. McGraw

Acting Director, Flight Standards

Service